

MAR 10 2008

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VICTOR GUTIERREZ-PEREZ,

Defendant - Appellant.

No. 06-50704

D.C. No. CR-06-01038-WQH

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted February 26, 2008^{**}

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges.

Victor Gutierrez-Perez appeals from the 63-month sentence imposed following his bench-trial conviction for being a deported alien found in the United

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

States, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Gutierrez-Perez contends that the district court improperly applied a sixteen-level upward adjustment based on a prior Oregon felony conviction because he was denied a counseled hearing in Oregon court to determine whether his case should be transferred to the adult system. This contention fails because Gutierrez-Perez is not entitled to collaterally attack his prior conviction. *See United States v. Gutierrez-Cervantez*, 132 F.3d 460, 462 (9th Cir. 1997).

Gutierrez-Perez also contends that his sentence is unreasonable. We conclude that Gutierrez-Perez's sentence is reasonable. *See Gall v. United States*, 128 S. Ct. 586, 597-98 (2007).

AFFIRMED.